LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Twenty-First Annual Report
April 1, 2011 to March 31, 2012

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OF
NOVA SCOTIA

TWENTY-FIRST ANNUAL REPORT

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The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

The Commissioners for 2011-2012:

Anthony L. Chapman, Q.C., President
Darlene Jamieson, Q.C.
Dr. John L. McMullan
Justice Kevin Coady
Professor Robert J. Currie
Dr. Brian R. Joseph
D. Peter Mancini

The Commission staff in 2011-2012:

Angus Gibbon
Executive Director and General Counsel

Ilana Luther
Legal Research Counsel

Andrea Davidson
Administrative Assistant

William H. Charles, Q.C.
Special Counsel

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OVERVIEW OF THE COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*, which came into force in 1991. The Commission reviews Nova Scotia's laws and makes recommendations for their improvement, modernization and reform.

The Commission consists of between five and seven Commissioners (there are currently seven), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia.

The Commission is funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts.

The Commissioners serve part-time and come from different sectors of the community, including: (a) a judge of a court of the Province; (b) two members of the Nova Scotia Barristers' Society; (c) a a member of the faculty of the Schulich School of Law, Dalhousie University; and (d) up to two community representatives appointed by the provincial Cabinet. At least one of the Commissioners must not be a graduate in law.

The Commission has produced 47 project papers and reports, and 20 annual reports. All publications can be downloaded without cost from the Commission's website.

Since it began operations in 1991, many of the Commission's recommendations have been adopted directly in new legislation or improvements to existing statutes. One of the Commission's first reports led to the creation of Nova Scotia's family maintenance enforcement program, under the *Maintenance Enforcement Act*. The Commission's reports on probate law and the law of wills resulted in a new *Probate Act* in 2000 and significant reforms to Nova Scotia's *Wills Act* in 2006. Its report on builders' liens resulted in the enactment of a new *Builders' Lien Act* in 2004. The Commission's recommendations in relation to mental health law formed the basis for many of the provisions of the *Involuntary Psychiatric Treatment Act* of 2005. A report on substitute decision-making for personal care decisions provided the background for the *Personal Directives Act* of 2008. The Commission's 2006 report on vexatious litigants resulted in amendments to the *Judicature Act* in 2009, to deal with those who unduly strain the time and resources of Nova Scotia courts.

More recently, the government of Nova Scotia has enacted regulations under the *Environment Act* in respect of contaminated sites, relying on the Commission's 2009 report on that topic. The regulations are scheduled to come into effect in July 2013. In 2011, the provincial legislature passed legislation to abolish an antiquated and troublesome rule of law called the rule against perpetuities, following the Commission's 2010 report recommending the abolition of that rule. In May of 2012 the legislature passed legislation to amend the *Maintenance and Custody Act*, expressly confirming the rights of grandparents to apply for access rights to grandchildren, following the Commission's 2007 recommendation to that effect.

THE YEAR IN REVIEW 2011-2012

Work Program and Publications

Seniors-only Housing

This project was undertaken as a result of a reference to the Commission from the Attorney General of Nova Scotia in March 2010. The principal issue was whether or not there should be an amendment to the Nova Scotia *Human Rights Act* in order to facilitate the development of housing which is reserved exclusively for seniors. Certain Canadian jurisdictions have provisions in their human rights legislation which exempt seniors-only housing from a complaint of age discrimination.

The Commission published a Discussion Paper in December of 2010, and a Final Report in April 2011. The Commission concluded that an exemption for seniors-only housing should not be introduced into the Nova Scotia *Human Rights Act*. The Commission was concerned that a blanket exemption would apply to any seniors-only restriction. That would include assisted living facilities but also a gated community, or a condo, or apartment building, reserved for seniors. The exemption would deny housing opportunities to younger adults and families with children. In the Commission's view, while that might be justifiable in certain cases, it would not be so in every case. The *Act* currently has a number of existing defences and exemptions that permit seniors-only housing when the restriction can be justified. The Commission concluded those provisions were better than a blanket exemption.

As the Commission noted upon the publication of the Final Report:

> The *Act* presently contains exemptions for '*bona fide* requirements' - that is, where a form of alleged discrimination is necessary for important purposes, and there is no other reasonable option - and also programs to remedy disadvantage of certain groups, including seniors. Either of those could be used to justify a seniors-only rule, depending on the circumstances. As well, under the *Act*, the Human Rights Commission has discretion to approve an age-based restriction in advance, thereby shielding it from a complaint. ... [T]he *Act*'s current provisions are better than a blanket exemption, because they require an assessment of the justification for each age limit, rather than permitting any age restriction, whether justified or not.

Enforcement of Civil Judgments

This project had its origins in the Commission's work in 2009 evaluating the Small Claims Court. In survey research, users of the Small Claims Court expressed general satisfaction with the workings of that court, but were frustrated with the process for enforcing, or collecting on, judgments. The Department of Justice asked the Commission to examine the issue of enforcement in the civil justice system at large. This is an important project involving both access to, and the effectiveness of, the justice system.

This project includes a discrete enforcement question relating to the garnishment of wages of judgment debtors. This issue first arose during the passage of the new *Civil Procedure Rules* through the House of Assembly, and was referred to the Commission for study in 2009. The Commission decided that this question could be best dealt with in the context of the civil judgment enforcement project.

The project examines the various statutes, regulations and rules that govern a disparate array of enforcement processes, with the aim of streamlining and simplifying the system. The project also considers modernization and enhancement of the powers of enforcement officers, in order to better effect recovery of elusive or intangible assets. Finally, the project aims to modernize Nova Scotia's provisions for exempt assets and income, to ensure that judgment debtors and their families are not deprived of the means to function as healthy, productive and continuing members of society.

A project Advisory Group met in December 2009 and in April 2010. A discussion paper was published in December of 2011. The discussion paper proposed substantial adoption of the Uniform Law Conference of Canada's *Uniform Enforcement of Civil Money Judgments Act*, modified to suit the Nova Scotia context. The Commission received a number of responses from interested stakeholders, including lawyers, poverty law advocates, the banking industry, and credit counseling agencies. The Commission has undertaken significant further research and deliberation on various matters raised in the comments. A second discussion paper is planned for later in 2012 on the matter of asset and income exemptions, with a final report expected to follow in 2013.

Builders' Lien Act

In March of 2010, the Minister of Justice requested the Commission's recommendations with regard to several discrete questions relating to holdbacks under the *Builders' Lien Act* of 2004. That *Act* reflects the recommendations in the Commission's 2003 Report, *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act*. As well, the project examines whether and to what extent the Small Claims Court ought to have jurisdiction over builders' lien matters.

The Commission published a Discussion Paper in March of 2012. A number of responses were received and the Commission will publish a Final Report later this year.

Powers of Attorney Act

The Minister of Justice requested the Commission to provide its general recommendations regarding the improvement and modernization of the Nova Scotia *Powers of Attorney Act*. The *Act* is inadequate and out of date, and its deficiencies have propelled recent litigation and piecemeal reform legislation. The legislation in other Canadian jurisdictions is far more modern and expansive, particularly with regard to the duties of the attorney and the protection of the donor. The project affords an opportunity to strengthen Nova Scotia's laws for the protection of seniors, and others who rely on substitute decision-makers.

The Commission prepared an extensive Issues Paper, including a comprehensive comparative review of powers of attorney and substitute decision-making legislation in Canada and beyond. The Commission convened an advisory group, consisting of practitioners with expertise in estate planning and elder law, the CEO of the Nova Scotia Department of Seniors, an RCMP Senior Safety Coordinator and the Nova Scotia Public Trustee. The group has held a number of meetings to discuss the issues raised in the Issues Paper, with the aim of developing preliminary proposals for the Commission's consideration. The Commission expects to publish a discussion paper during the 2012-13 fiscal year.

Matrimonial Property Act

During the reporting period, Commission staff began research for a project to review the Nova Scotia *Matrimonial Property Act*. It has been 30 years since the *Act* came into force, and it has not been substantially amended since that time. Family law stakeholders, and in particular the practicing bar and academic commentators, have indicated that the *Act* is in need of review on several fronts. The *Act* affects a large number of Nova Scotians - family law litigation representing a substantial proportion of contested matters in Nova Scotia courts. A number of other jurisdictions have substantially reformed their matrimonial property legislation in recent years.

The Commission approved the project at its meeting in April 2012, and Commission staff has begun research and preparation in earnest. The Commission expects to convene an advisory group in the Fall.

Internal Administration and Organization

The Commission currently has seven Commissioners. In June of 2011, Mr. D. Peter Mancini was appointed to the Commission. Mr. Mancini, a former Member of Parliament for Sydney-Victoria, practiced with Nova Scotia Legal Aid for 25 years, and is currently Director of Service Delivery for the Nova Scotia Legal Aid Commission.

As of April 1, 2011, Angus Gibbon was appointed to the position of Executive Director, replacing John E.S. Briggs upon his retirement. The position of Legal Research Counsel was filled in mid-June 2011 with the appointment of Ms. Ilana Luther. Ms. Luther is a graduate of Osgoode Hall Law School, and has an LLM from Harvard Law School. She practiced poverty law and family law in Ontario and Nova Scotia before joining the Commission. She is currently completing a JSD at the Schulich School of Law at Dalhousie University.

The Commission continues to benefit from the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all Commission projects during the past year.

Funding & Finances

The Commission's financial statement for the year ending 31 March 2012 is attached to this report as an Appendix.

During the reporting period, the Commission received operational funding in the amount of $142,325.00 from the Law Foundation, and $184,824.00 from the Department of Justice.

The Commission incurred an operating surplus of $35,942.41 in 2011-12, mainly due to a vacancy in the position of Legal Research Counsel from April 1 to mid-June, 2011, and cost-cutting to bring expenses in line with expected future revenue. As anticipated, Law Foundation funding for 2012-13 was reduced by 25%, due to persistently low interest rates. The Commission is expecting to incur an operating deficit of approximately $20,000 in the 2012-13 fiscal year, despite significant further cost cutting.

COMMISSIONERS 2011-2012

Anthony L. Chapman Q.C., President
Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

Kevin Coady
Mr. Coady was appointed to the Commission by Order in Council in December 2007. Mr. Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with Coady Filliter and taught Criminal Law at Dalhousie University.

Robert J. Currie
Mr. Currie was appointed to the Commission by Order in Council in January 2010. He is an Assistant Professor at the Schulich School of Law, Dalhousie University which he joined in 2002. Prior to his academic appointment Mr. Currie had a civil litigation practice. He has been a member of the Nova Scotia Bar since 2000. Mr. Currie is a specialist in the area of international and transnational criminal law. He has authored and co-authored numerous articles on this subject as well as his own book *International and Transnational Criminal Law*.

Darlene Jamieson Q.C.
Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998 with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

Brian R. Joseph
Dr. Joseph was appointed to the Commission by Order in Council in April 2010. He is a graduate of St. Francis Xavier University (B.Sc. and B.A. Hons) University of Toronto (M.A.) and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

D. Peter Mancini
Mr. Mancini was appointed to the Commission by Order in Council in June 2011. He attended Dalhousie University where he earned a B.A. (Honours) degree, major in Political Science before entering Dalhousie Law School and earning a LLB. He has practiced with Nova Scotia Legal Aid for 25 years, taking two leaves of absence. He taught at Cape Breton University and was a Member of Parliament for the riding of Sydney Victoria. During that period he was a member of the standing committee on Justice and Human rights. In 2001 he returned to Nova Scotia legal aid as a full time staff lawyer with a focus on Criminal Law. In 2010 he was named the Service Delivery Director for Nova Scotia Legal Aid and joined the executive branch of the organization. He has presented at Criminal law conferences and Family law conferences sponsored by the Nova Scotia Barristers' Society, Canadian Bar Association, and the Criminal Lawyers Association.

John L. McMullan
Dr. McMullan was appointed to the Commission by Order in Council in February 2006. He is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

STAFF

Angus Gibbon
Executive Director
Mr. Gibbon joined the Commission as Legal Research Counsel in August 2009, and was appointed Executive Director in April of 2011. A graduate of Acadia University, he received his law degree from the University of Toronto in 1999, followed by a Doctor of Philosophy from the University of Toronto in 2005. Mr. Gibbon was called to the Nova Scotia Bar in 2004 and was in general private practice before joining the Commission. He is on the part-time faculty of the Schulich School of Law at Dalhousie University.

Ilana Luther
Legal Research Counsel
Ms. Luther joined the Commission in June 2011. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, Ms. Luther received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. She has worked for legal aid both in Ontario and in Nova Scotia. She is currently a Doctoral candidate at the Schulich School of Law (Dalhousie University).

Andrea Davidson
Administrative Assistant
Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

William H. Charles, Q.C.
Special Counsel
Professor Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

APPENDIX - FINANCIAL REPORT FOR THE 2011-2012 FISCAL YEAR

LAW REFORM COMMISSION OF NOVA SCOTIA
Income Statement as at 3/31/12

REVENUE			
Department of Justice		184,824.00	
Nova Scotia Law Foundation		142,325.00	
Interest Income		1,874.77	
TOTAL REVENUE			**329.023.77**
EXPENSES			
Wages	209,686.32		
EI Expense	3,015.81		
CPP Expense	6,891.19		
Group Insurance Expense	4,846.51		
TOTAL PERSONNEL EXPENSE		224,439.83	
Advertising	859.10		
Commissioners Fees & Expenses	5,810.36		
Electrical Expense	765.01		
Meeting Costs	664.59		
Library	2,423.14		
Accounting Fees	120.00		
Membership Dues	1,991.63		
Computer Software/Supplies/Repairs	964.95		
Internet	1,347.18		
Staff Expenses	481.61		
Rent	33,156.48		
Office Equipment Rental	2,185.93		
Insurance	1,143.00		
Office Supplies	1,230.85		
Photocopy/Printing	4,039.06		
Postage & Courier	1,697.59		
Telephone Expense	2,757.83		
Travel/Conference/Workshop	1,951.74		
Staff Dev. & Registration Fee	0.00		
Office Equipment Maintenance	552.95		
Bank Charges	247.44		
HST Paid on Purchases	4,251.09		
TOTAL ADMINISTRATION & OFFICE EXPENSE		68,641.53	
TOTAL EXPENSE			**293,081.36**
NET INCOME			**35,942.41**

Law Reform Commission of Nova Scotia
Balance Sheet as at 03/31/2012

ASSETS

CURRENT ASSETS				
Petty Cash	25.00			
Bank Operating Account	23,396.01			
Cashable GICS	233,689.01			
T-Bill Account	0.00			
Total Cash		257,110.02		
HST Receivable		4,198.29		
Total current assets			261,308.31	
FIXED ASSETS				
Computer Equipment	19,059.16			
Accum. Computer Equipment	-19,069.16			
Net Office Equipment	0.00			
Total fixed assets			0.00	
TOTAL ASSETS				**261,308.31**

LIABILITIES

CURRENT LIABILITIES				
Vacation Payable	0.00			
UIC Payable	0.00			
CPP Payable	0.00			
Income Tax Payable	0.00			
Receiver General Payable	0.00			
Accrued Income	184,824.00			
TOTAL LIABILITIES			**184,824.00**	

EQUITY

SURPLUS				
Surplus Beginning of Year	40,541.90			
Surplus Current Year	35,942.41			
Accumulated surplus[1]	76,484.31			
TOTAL EQUITY			**76,484.31**	
LIABILITIES AND EQUITY				**261,308.31**

[1] The 2011-12 fiscal year began with accumulated savings of $40,541.90. A surplus occurred in 2011-12 due primarily to a vacancy in one of the Commission's staff positions, which was filled in mid-June 2011, as well as expenditure reductions to bring expenses in line with expected future revenue.